

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, <i>et al.</i>)	
)	
)	
Plaintiffs,)	
)	No. 1:14-cv-254
v.)	
)	
UNITED STATES OF AMERICA, <i>et al.</i>)	
)	
Defendants.)	
)	

**JOINT MOTION TO STAY MERITS PROCEEDINGS PENDING
RESOLUTION OF DEFENDANTS' APPEAL**

The parties hereby jointly move to stay proceedings on the merits of Plaintiffs' claims, including the obligation to propose a schedule for resolution of the case, pending final disposition of Defendants' appeal of the preliminary injunction, including through any additional appellate channels in which relief may be sought. The basis for this motion is as follows:

1. On February 16, 2015, the Court issued an order preliminarily enjoining Defendants from "implementing any and all aspects or phases" of DAPA and modifications to DACA as set forth in the November 20, 2014 memorandum that is the subject of Plaintiffs' challenge in this case. Order of Temporary Inj. ("Order") at 1-2 [ECF No. 144]. In that same Order, the Court directed the parties to "meet and confer and formulate and file with the Court by February 27, 2015 an agreed upon (to the extent possible) schedule for the resolution of the merits" of the case.

2. On February 23, 2015, Defendants appealed the preliminary injunction to the Fifth Circuit. [ECF No. 149]. Defendants also simultaneously moved to stay the

preliminary injunction pending resolution of that appeal [ECF No. 150], which this Court ultimately denied. [ECF No. 225]. Defendants thereafter petitioned the Fifth Circuit for a stay of the preliminary injunction pending appeal.

3. On February 27, 2015, the parties jointly moved before this Court to extend their deadline to file a proposal for resolving the merits of this case until 14 days after Defendants' motion for a stay of the injunction was finally resolved through any appellate channels in which relief might be sought. [ECF No. 162]. The basis for seeking such a postponement was to allow the parties' consideration of the appropriate next steps in this case to be informed by the resolution of that stay request. The Court granted that motion. [ECF No. 164]. Thereafter, the Court separately stayed Defendants' obligation to respond to the complaint until further order of the Court. [ECF No. 200].

4. On May 26, 2015, a motions panel of the Fifth Circuit denied Defendants' application to stay the preliminary injunction pending resolution of Defendants' appeal. On May 27, 2015, the Department of Justice determined that it would not seek a stay pending appeal in the Supreme Court. The Fifth Circuit has expedited consideration of the merits of Defendants' appeal of the preliminary injunction, and argument on that appeal is scheduled for July 10, 2015.

5. The parties respectfully submit that further proceedings on the merits of this case, including discussions about, and entry of, a schedule for resolving the merits of the case, should be stayed pending final resolution of Defendants' appeal of the preliminary injunction, including through any additional appellate channels in which relief may be sought. This Court has the authority to issue such a stay of proceedings: "[T]he power to stay proceedings is incidental to the power inherent in every court to

control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). The resolution of Defendants’ appeal is likely to affect the scope and nature of future litigation before this Court, and the Court and the parties will thus benefit from knowing the resolution of that appeal before engaging in further merits proceedings here. *See Ass’n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008). Additionally, given the overlap between the issues presented in Defendants’ appeal and the issues pending before this Court on the merits of Plaintiffs’ claim, a stay would prevent duplicative litigation of issues subject to appellate proceedings. *Cf. Apostol v. Gallion*, 870 F.2d 1335, 1337 (7th Cir. 1989) (“[S]imultaneous proceedings in multiple forums create confusion and duplication of effort.”). Accordingly, a stay would significantly advance the interests of judicial economy, prevent the unnecessary expenditure of time and resources until it is clear what sorts of proceedings may be necessary, and promote an orderly disposition of the issues presented.

6. The requested stay will not cause undue delay, inasmuch as Defendants’ appeal is scheduled to be heard in one month’s time, on July 10, 2015. Moreover, because both parties are amenable to a stay of the merits proceedings, the balance of interests weighs heavily in favor of granting that stay.

Dated: June 10, 2015

KENNETH MAGIDSON
United States Attorney

DANIEL DAVID HU
Assistant United States Attorney
Deputy Chief, Civil Division

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

KATHLEEN R. HARTNETT
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Branch Director, Federal Programs Branch
Attorney-in-Charge (VA Bar No. 29281)

JOHN R. TYLER
Assistant Branch Director

/s/ Kyle R. Freeny
KYLE R. FREENY (Cal. Bar No. 247857)
BRADLEY H. COHEN
ADAM D. KIRSCHNER
JULIE S. SALTMAN
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883, Washington, D.C. 20044
Tel.: (202) 514-5108 / Fax: (202) 616-8470
Kyle.Freeny@usdoj.gov

Counsel for Defendants

LUTHER STRANGE
Attorney General of Alabama

MARK BRNOVICH
Attorney General of Arizona

DUSTIN MCDANIEL
Attorney General of Arkansas

PAMELA JO BONDI
Attorney General of Florida

SAMUEL S. OLENS
Attorney General of Georgia

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

SCOTT A. KELLER
Solicitor General

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Assistant Attorney General
Attorney-in-Charge
State Bar No. 24048399

LAWRENCE G. WASDEN
Attorney General of Idaho

J. CAMPBELL BARKER
Deputy Solicitor General

JOSEPH C. CHAPELLE
PETER J. RUSTHOVEN
Counsel for the State of Indiana

ADAM N. BITTER
Assistant Attorney General

DEREK SCHMIDT
Attorney General of Kansas

Office of the Attorney General of Texas
P.O. Box 78711
Austin, Texas 78711-2548
512-936-1700

JAMES D. "BUDDY" CALDWELL
Attorney General of Louisiana

TIMOTHY C. FOX
Attorney General of Montana

JON C. BRUNING
Attorney General of Nebraska

ADAM PAUL LAXALT
Attorney General of Nevada

WAYNE STENEHJEM
Attorney General of North Dakota

Michael DeWine
Attorney General of Ohio
Eric E. Murphy
Co-counsel for the State of Ohio

E. Scott Pruitt
Attorney General of Oklahoma

Alan Wilson
Attorney General of South Carolina

Marty J. Jackley
Attorney General of South Dakota

Herbert Slatery III
Attorney General and Reporter of
Tennessee

Sean D. Reyes
Attorney General of Utah

Patrick Morrisey
Attorney General of West Virginia

Brad D. Schimel
Attorney General of Wisconsin

Bill Schuette
Attorney General for the People of
Michigan

Drew Snyder
Counsel for the Governor of Mississippi

Paul R. LePage
Governor of Maine

Robert C. Stephens
Counsel for the Governor of North
Carolina

Tom C. Perry
Cally Younger
Counsel for the Governor of Idaho

CERTIFICATE OF CONFERRAL

Undersigned counsel hereby certifies that counsel for Plaintiffs, Angela Colmenero, concurred in the filing of this Joint Motion to Stay Merits Proceedings Pending Resolution of Defendants' Appeal.

/s/ Kyle R. Freeny
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion to Stay Merits Proceedings Pending Resolution of Defendants' Appeal has been delivered electronically on June 10, 2015, to counsel of record via the District's ECF system.

/s/ Kyle R. Freeny
Counsel for Defendants